

REMARKS

Applicants have not amended the claims in this response.

Claims 1-33 are currently pending in the application.

Claims Rejections – 35 USC § 102

Claims 1-4, 7, 9, 10, 13, 14, 24-27 and 29 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,888,831 to Gautsch, (“Gautsch”).

This rejection is respectfully traversed.

Of the claims rejected, claims 1, 13, 24 and 26 are independent, with the remaining claims dependent thereon.

Claims 1 and 13 are directed to at least a first container assembly and a second container assembly, each of the container assemblies having an inner container nested within an outer container, where the internal volume of the inner container of the second container assembly is less than the internal volume of the inner container of the first container assembly.

Claim 24 recites among other things a method for collecting a sample of liquid comprising:

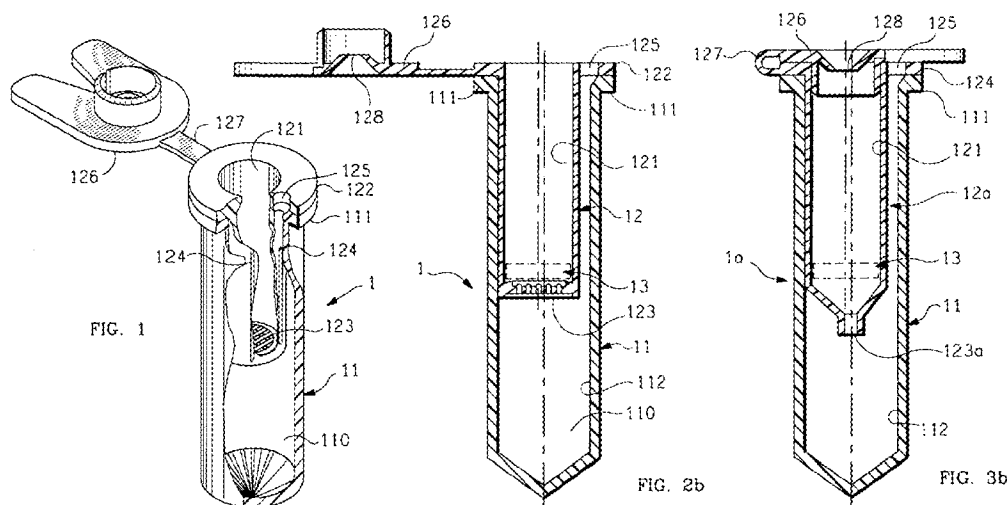
providing a plurality of inner containers,, at least a first of said inner containers defining a smaller interior volume than at least a second of said inner containers;
determining a required volume for a liquid sample;
selecting an appropriate one of said inner containers with a volume greater than the required volume by an amount sufficient for achieving a specified head space;
inserting the selected inner container into any of said outer containers to define a container assembly; and
collecting the selected volume of said liquid in the container assembly for achieving the specified head space in said container assembly.

Claim 26 recites among other things a method for collecting a sample of liquid among:
providing at least first and second containershaving at least first and second different internal volumes;
determining a required volume for a liquid sample;
selecting an appropriate one of said containers with a volume greater than the required volume by an amount for achieving a specified head space;
collecting the selected volume of said liquid in said selected one of said container for achieving the specified head space in the container.

Applicants submit that Gautsch fails to disclose at least the claimed features of;

- (a) the second volume being less than the first volume (of the inner containers).
- (b) the second inner volume being less than the first inner volume by an amount substantially corresponding to a difference between the first and second volumes of liquid.
- (c) selecting an appropriate one of said inner containers with a volume greater than the required volume by an amount sufficient for achieving a specified head space.
- (d) collecting the selected volume of said liquid in said selected one of said container for achieving the specified head space in the container.

Gautsch discloses a plastic "miniprep" device for separating liquid samples including a first, sample, cylindrical container (12, 12a) having an inlet and an outlet opening between which a filter layer (13) is arranged, the outlet opening typically being connected to and enclosed by an outlet spout (123a), fitting within a cylindrical bore of a second, collecting, container (11) receiving the separated liquid discharged from the outlet spout (See Figs 1-3 shown below).



Gautsch is completely silent on the internal volume of either sample container (12, 12a) embodiment and fails to disclose that the internal volume of the inner container of a first container assembly can be different to the internal volume of the inner container of a second container assembly.

Furthermore Gautsch is completely silent in regard to a specific head space within a collection container let alone the selection of an appropriate inner container volume for a specified head space or the collection of a selected sample volume in order to achieve a specified head space.

Thus Gautsch fails to anticipate claims 1, 13, 24 and 26.

For these reasons, Applicants submit that claim 1, and dependent claims 2-4, 7, 9, and 10, claim 13 and dependent claim 14, claim 24 and dependent claim 25, and claim 26 and dependent claims 27 and 29, are not anticipated by the cited reference.

Nor would Gautsch render claims 1, 13, 24 and 26 obvious.

There is no suggestion in Gautsch whatsoever that the internal volume of the inner container of a first container assembly can be different to the internal volume of the inner container of a second container assembly. In addition Gautsch fails to suggest the selection of an appropriate inner container volume for a specified head space or the collection of a selected sample volume in order to achieve a specified head space when collecting a sample.

Gautsch teaches a separation device in which a sample container (12) has a filter (13) at the base to allow sample to be filtered into the outer collection container (11). The filtered sample is then recovered from the outer collection container (11) after centrifugation. Thus head space in the sample container (12) is not of relevance in the Gautsch device.

Furthermore it will be extremely difficult to achieve a specific head space in the sample container of Gautsch as the head space will be a variable of filter type, sample type and centrifuge conditions.

Accordingly, it is submitted that the container assembly as defined by claims 1, 13, 24 and 26 are not taught or suggested by Gautsch. In addition, claims 2-4, 7, 9, and 10, 14 being dependent on claim 1, claim 14 being dependent on claim 13, claim 24 being dependent on claim 25, and claim 27 and 29 being dependent on claim 26 are likewise patentable over the cited reference.

Allowable Subject Matter

Applicants acknowledge the Examiner's allowance of Claims 15 to 23 and the allowability of claims 5, 6, 11, 12, 28 and 30-33 if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

In view of the remarks herein, applicant submits the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's agent at the telephone number set forth below.

Respectfully submitted,

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